

Attorney or Party Name, Address, Telephone, FAX Numbers, and California State Bar Number

HYDEE J. MULICHAK  
BARRY GARDNER & KINCANNON  
4400 MacArthur Boulevard #700  
Newport Beach, CA 92660

949/851-9111

949/851-3935

**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA**

In re: MELLO SERVICE INC.

Debtor(s).

COURT USE ONLY

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CLERK U.S. BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA

BY: \_\_\_\_\_ DEPUTY

CASE NO.:

RS03-18201-PC

**NOTICE OF SALE OF ESTATE PROPERTY**

**Sale Date:** February 2, 2004

**Time:** 9:00 a.m.

**Location:** 3420 Twelfth Street, Riverside, California 92501

Type of Sale: ☒ Public: ☐ Private: Last date to file objections: January 20, 2004

Description of Property to be Sold: The estate's right, title and interest, if any, in litigation more particularly described in the attached Notice of Motion.

Terms and Conditions of Sale: As is, where is, without representations and warranties.

Proposed Sale Price: As set forth in the attached Notice of Motion.

Overbid Procedure (If Any): In increments of \$500.00 as more particularly set forth in the attached Notice of Motion.

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

Contact Person for Potential Bidders (include name, address, telephone, fax and/or e-mail address):

Hydee J. Mulichak E-Mail: hmulichak@sbgk.com

Barry, Gardner & Kincannon

4400 MacArthur Boulevard #700

Newport Beach, CA 92660

Phone 949/851-9111; Fax 949/851-3935

Date: January 9, 2004

1 HYDEE J. MULICHAK, Bar No. 158779  
JEFFREY B. GARDNER, Bar No. 115648  
2 BARRY, GARDNER & KINCANNON  
A Professional Corporation  
3 4400 MacArthur Boulevard, Suite 700  
Newport Beach, California 92660  
4 Telephone: (949) 851-9111  
Facsimile: (949) 851-3935

5 Attorneys for P.J. Zimmermann,  
6 Chapter 7 Trustee  
7

8 **UNITED STATES BANKRUPTCY COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10

11 In re ) Case No. RS03-18201-PC  
12 )  
MELLO SERVICE INC., ) Chapter 7  
13 )  
14 Debtor. ) **NOTICE OF MOTION FOR ORDER**  
15 ) **APPROVING SALE AND**  
16 ) **ASSIGNMENT OF THE ESTATE'S**  
17 ) **RIGHT, TITLE AND INTEREST IF**  
18 ) **ANY, IN LITIGATION BY**  
19 ) **AUCTION**  
20 )  
21 ) Date: February 2, 2004  
22 ) Time: 9:00 a.m.  
23 ) Ctrm: 303  
24 )  
25 )  
26 )  
27 )  
28 )

20 TO ALL INTERESTED PARTIES HEREIN:

21 PLEASE TAKE NOTICE that on February 2, 2004 at 9:00 a.m.,  
22 in Courtroom 303 of the above-entitled Court located at 3430  
23 Twelfth Street, Riverside, California, P.J. Zimmermann, the duly  
24 appointed, qualified and acting Chapter 7 Trustee ("Trustee"),  
25 of the bankruptcy estate of Mello Service Inc. ("Debtor"), will  
26 move this Court for an order approving the sale by auction of  
27 the estate's right, title and interest as cross-complainant, if  
28 any, as is, where is, without representations or warranties, in

the following litigation matters as follows:

(a) As Cross-Complainant against Greater Bay Bank ("GBB"), in the matter of GREATER BAY BANK, a division of CUPERTINO NATIONAL BANK, Plaintiff, v. MELLO SERVICE, INC., a California corporation, DOUGLAS T. PERKINS, an individual, SOUTHERN COUNTIES OIL CO., a California corporation, and DOES 1 through 50, inclusive, Defendants, MELLO SERVICE, INC., a California corporation, Cross-Complainant, v. GREATER BAY BANK, a division of CUPERTINO NATIONAL BANK & TRUST, C.A. STEVENS, INC., a California corporation, CECIL A. STEVENS, individually and as trustee of the C.A. Stevens Family Trust Created May 1, 1989, DEBORAH T. STEVENS, individually and as trustee of the C.A. Stevens Family Trust Created May 1, 1989, and ROES 1 through 50, inclusive, Cross-Defendants, San Bernardino County Superior Court Case No. VCVVS 030349("GBB Litigation");

(b) As Cross-Complainant against C.A. Stevens, Inc., Cecil A. Stevens and Deborah T. Stevens (collectively referred to as "Stevens Cross-Defendants"), in the GBB Litigation; and

(c) As Cross-Complainant against Cox Oil company, Inc. and Nuckles Oil, Co., Inc. and any other potential cross-defendant ("Cross-Defendants"), in the NUCKLES OIL CO., INC. dba MERIT OIL COMPANY, Plaintiff, v. MELLO SERVICE, INC.; DOUGLAS T. PERKINS aka DOUG PERKINS; MONTY LEWIS and DOES 1 to 5, Defendants, MELLO SERVICES INC., Cross-Complainant, v. COX OIL COMPANY, INC. A California Corporation, NUCKLES OIL CO., INC. dba MERIT OIL CO., and DOES 1-50, San Bernardino County Case No. SCBSS099803 ("Nuckles Litigation").

/ / /

1 An involuntary petition was filed against Mello Service,  
2 Inc. ("Debtor") under Chapter 11 of the Bankruptcy Code on May  
3 28, 2003. The case was subsequently converted to Chapter 7 on  
4 August 26, 2003 and P.J. Zimmermann was appointed as Chapter 7  
5 Trustee.

6 Included in the assets of the estate are the Debtor's  
7 interest as cross-complainant in the following two pending  
8 lawsuits:

9 (a) GREATER BAY BANK, a division of CUPERTINO NATIONAL  
10 BANK, Plaintiff, v. MELLO SERVICE, INC., a California  
11 corporation, DOUGLAS T. PERKINS, an individual, SOUTHERN  
12 COUNTIES OIL CO., a California corporation, and DOES 1 through  
13 50, inclusive, Defendants, MELLO SERVICE, INC., a California  
14 corporation, Cross-Complainant, v. GREATER BAY BANK, a  
15 division of CUPERTINO NATIONAL BANK & TRUST, C.A. STEVENS, INC.,  
16 a California corporation, CECIL A. STEVENS, individually and as  
17 trustee of the C.A. Stevens Family Trust Created May 1, 1989,  
18 DEBORAH T. STEVENS, individually and as trustee of the C.A.  
19 Stevens Family Trust Created May 1, 1989, and DOES 1 through 50,  
20 inclusive, Cross-Defendants, San Bernardino County Superior  
21 Court Case No. VCVVS 030349 as is, where is, without warranties  
22 and representations ("GBB Litigation"); and

23 (b) NUCKLES OIL CO., INC. dba MERIT OIL COMPANY,  
24 Plaintiff, v. MELLO SERVICE, INC.; DOUGLAS T. PERKINS aka DOUG  
25 PERKINS; MONTY LEWIS and DOES 1 to 5, Defendants, MELLO SERVICES  
26 INC., Cross-Complainant, v. COX OIL COMPANY, INC. A California  
27 Corporation, NUCKLES OIL CO., INC. dba MERIT OIL CO., and DOES  
28 1-50, San Bernardino County Case No. SCBSS099803 as is, where

1 is, without warranties and representations ("Nuckles  
2 Litigation").

3 The Trustee has conducted an investigation with respect to  
4 the potential value of the GBB Litigation and the Nuckles  
5 Litigation to the estate, and has determined that it would not  
6 be economical nor appropriate for the Trustee to pursue the GBB  
7 Litigation or the Nuckles Litigation on behalf of the estate,  
8 and that the interests of creditors would be best served by  
9 selling the GBB Litigation and the Nuckles Litigation.

10 The following bids have been received:

- 11 (1) \$10,000 from FABRA West, Inc. for the purchase of the  
12 estate's right, title and interest, if any, as Cross-  
13 Complainant in the GBB Litigation against GBB;
- 14 (2) \$10,000 from FABRA West, Inc. for the purchase of the  
15 estate's right, title and interest, if any, as Cross-  
16 Complainant in the GBB Litigation against the Stevens  
17 Cross-Defendants; and
- 18 (3) \$20,000 from FABRA West, Inc. for the purchase of the  
19 estate's right, title and interest, if any, as Cross-  
20 Complainant in the Nuckles Litigation against the  
21 Nuckles Cross-Defendants;

22 It should be noted that Don Goff is a related party in  
23 FABRA West, Inc., the present bidder of the assets being  
24 auctioned. Mr. Goff was also one of the parties who appeared at  
25 the meeting of creditors on behalf of the Debtor to testify  
26 regarding the assets and liabilities of the Debtor. He is also  
27 a related party in Black Diamond, the tenant and operational  
28 entity of the gas station located in Hesperia, which is the

1 subject of the GBB Litigation.

2 The Trustee has investigated the underlying facts in the  
3 GBB Litigation and the Nuckles Litigation and has reviewed the  
4 documents and pleadings in both cases. In this case, sound  
5 business reasons exist for the proposed sale based upon the  
6 following facts and circumstances:

7 (1) An auction sale would provide the most efficient and  
8 orderly means of liquidating the estate's interest, if  
9 any as Cross-Complainant in the GBB Litigation and the  
10 Nuckles Litigation;

11 (2) The Trustee cannot effectively nor economically  
12 prosecute nor settle the GBB Litigation and the  
13 Nuckles Litigation without incurring significant costs  
14 and attorney's fees, and this sale avoids these  
15 expenses;

16 (3) Funds will be brought into the bankruptcy estate for  
17 the benefit of the creditors with no risk of detriment  
18 to the estate;

19 (4) Judicial economy will be preserved as no litigation  
20 will be required in this matter in the Bankruptcy  
21 Court;

22 (5) The proposed sale does not affect the claims of GBB,  
23 the Stevens Cross-Defendants or the Nuckles Cross-  
24 Defendants against the estate herein, if any, and thus  
25 does not prejudice them in any manner; and

26 (6) Delay in closing the case will be minimized.

27 The auction will occur on February 2, 2004 at 9:00 a.m. in  
28 Courtroom 303 of the United States Bankruptcy Court, Central

1 District of California, Riverside Division, conducted by  
2 Trustee's counsel and subject to the approval of the Bankruptcy  
3 Court.

4 The property to be auctioned consists of (1) the estate's  
5 right, title and interest, if any, as Cross-Complainant against  
6 GBB in the GBB Litigation, (2) the estate's right, title and  
7 interest, if any, as Cross-Complainant against the Stevens  
8 Cross-Defendants in the GBB Litigation, and (3) the estate's  
9 right, title and interest, if any, in the Nuckles Litigation.  
10 Each of these shall be sold separately, as is, where is, without  
11 warranties or representations.

12 **It should be noted, however, the estate is selling and**  
13 **assigning its interest, if any, in the GBB Litigation and**  
14 **Nuckles Litigation as cross-complainants. As a result, the**  
15 **estate is not making any representations as to whether these are**  
16 **valid claims against GBB, the Stevens Cross-Defendants or**  
17 **Nuckles Cross-Defendants.**

18 The minimum bids for the estate's interest in the  
19 litigation are as follows:

20 (1) \$10,000 as Cross-Complainant against GBB in the GBB  
21 Litigation;

22 (2) \$10,000 as Cross-Complainant against the Stevens  
23 Defendants in the GBB Litigation;

24 (3) \$20,000 as Cross-Complainant against the Nuckles  
25 Cross-Defendants in the Nuckles Litigation. FABRA West, Inc. has  
26 deposited these minimum bids with the estate for a total sum of  
27 \$40,000, which has been deposited in the Trustee's trust  
28 account.

1 In the event there are no overbids received by the Trustee  
2 at the auction, FABRA West, Inc. shall, subject to court  
3 approval, be deemed the successful bidder in each of these  
4 sales. In the event FABRA West, Inc. is not deemed the  
5 successful bidder in one or more of the litigation matters,  
6 those sums deposited will be returned to him by the Trustee  
7 within ten (10) days after the entry of the order approving the  
8 auction.

9 The sale is subject to overbids in increments of \$500.00.  
10 Any person wishing to overbid must be personally present at the  
11 auction. Furthermore, any interested bidder must qualify to bid  
12 on each of the sales as follows:

13 (1) To qualify to bid on the estate's interest as Cross-  
14 Complainant against GBB in the GBB Litigation, each interested  
15 bidder must present certified funds in the sum of \$10,500.

16 (2) To qualify to bid on the estate's interest as Cross-  
17 Complainant against the Stevens Cross-Defendants in the GBB  
18 Litigation, each interested bidder must present certified funds  
19 in the sum of \$10,500.

20 (3) To qualify to bid on the estate's interest as Cross-  
21 Complainant against the Nuckles Cross-Defendants in the Nuckles  
22 Litigation, each interested bidder must present certified funds  
23 in the sum of \$20,500.

24 The certified funds must be made payable to P.J.  
25 Zimmermann, Chapter 7 Trustee and be presented to the Trustee's  
26 counsel prior to the auction.

27 Should the GBB Litigation or the Nuckles Litigation be sold  
28 for more than the amounts deposited with the Trustee, the party

1 purchasing the GBB Litigation and/or the Nuckles Litigation by  
2 highest bid which is accepted by the Trustee and approved by the  
3 Court, must submit to Trustee's counsel all remaining amounts  
4 owing to the Trustee in certified funds within two business days  
5 after the completion of the auction.

6 In the event that the remaining sums are not paid within  
7 this period:

8 (a) The next highest bidder may be declared the successful  
9 bidder and will have two business days to deliver all remaining  
10 sums to Trustee's counsel; and

11 (b) The defaulting highest bidder(s) will forfeit the  
12 deposit submitted to the Trustee.

13 In the event the next highest bidder does not pay all sums  
14 owing to the Trustee, such deposit will be forfeited to the  
15 estate.

16 Please be advised that further information is contained in  
17 the Motion for Order Approving Sale and Assignment of the  
18 Estate's Right, Title and Interest, If Any, in Litigation by  
19 Auction; Memorandum of Points and Authorities; and Declaration  
20 of P.J. Zimmermann in Support Thereof ("Motion"). The Motion is  
21 on file with the Clerk of the above-entitled Court which may be  
22 reviewed Monday through Friday from 9:00 a.m. to 4:00 p.m. or  
23 obtained by contacting counsel for the Trustee.

24 / / /

25 / / /

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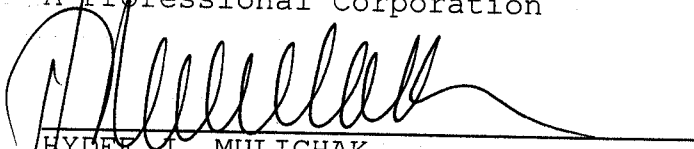
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1 PLEASE TAKE FURTHER NOTICE that pursuant to Local  
2 Bankruptcy Rule 9013-1(1)(g), objections, if any, to the Motion  
3 must be in writing, filed with the Court and served upon all  
4 appropriate parties, including Trustee's counsel, not later than  
5 14 days prior to the hearing on the Motion. Failure to timely  
6 file and serve objections may be deemed a waiver of the same.

7 DATED: January 9, 2004

BARRY, GARDNER & KINCANNON  
A Professional Corporation

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10   
11 HYDEE J. MULICHAK  
Attorneys for P.J. Zimmermann,  
Chapter 7 Trustee

12 H:\6760\Pleadings\notice motion to sell.wpd  
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1 PROOF OF SERVICE

2 I am employed in the County of Orange, State of California.  
3 I am over the age of 18 and not a party to the within action; my  
4 business address is 4400 MacArthur Boulevard, Suite 700, Newport  
5 Beach, California 92660.

6 On January 9, 2004, I served the foregoing document  
7 described as **NOTICE OF MOTION FOR ORDER APPROVING SALE AND  
8 ASSIGNMENT OF THE ESTATE'S RIGHT, TITLE AND INTEREST IN  
9 LITIGATION BY AUCTION** on the interested parties in this action  
10 by placing a true copy thereof enclosed in a sealed envelope  
11 addressed as follows:

12 SEE ATTACHED SERVICE LIST

13 /X/ [BY MAIL] I am readily familiar with the firm's business  
14 practice of collection and processing correspondence for  
15 mailing. Under that practice, it would be deposited with  
16 the U.S. Postal Service on that same day with postage  
17 thereon fully prepaid at Newport Beach, California in the  
18 ordinary course of business. I am aware that on motion of  
19 the party served, service is presumed invalid if postal  
20 cancellation date or postage meter date is more than one  
21 day after date of deposit for mailing in affidavit.

22 /X/ [FEDERAL] I declare that I am employed in the office of a  
23 member of the bar of this court at whose direction the  
24 service was made.

25 Executed on January 9, 2004, at Newport Beach, California.

26  
27  
28  
  
Diane M. Armstrong

1 In re Mello Service Inc.  
2 Bankruptcy Case No. RS03-18201-PC

3 SERVICE LIST

4 Debtor

5 Mello Service Inc.  
6 Officer, Director or Managing  
7 Partner  
8 6000 Mariposa Road  
9 Hesperia, CA 92345

Attorney for Debtor

Michael G. Spector, Esq.  
Law Offices of Michael G.  
Spector  
2677 North Main St. Ste. 870  
Santa Ana, CA 92705

7 Attorney for Creditor

8 Stephen R. Wade  
9 400 North Mountain Avenue #214B  
10 Upland, CA 91786

Chapter 7 Trustee

P.J. Zimmermann  
31566 Railroad Canyon Road #306  
Canyon Lake, CA 92587-9446

10 United States Trustee

11 United States Trustee  
12 3685 Main Street #300  
13 Riverside, CA 92501

Request for Special Notice

Greater Bay Bank  
c/o Beth Young, Esq.  
Jeffer Maangels Butler et al.  
1900 Avenue of the Stars  
Seventh Floor  
Los Angeles, CA 90067

14 Request for Special Notice

15 K&N Gas Co., et al.  
16 c/o T. Michael Turner  
17 P.O. Box 1609  
18 Palo Alto, CA 94302-1609

Request for Special Notice

K&N Gas Co., et al.  
James F. Beiden  
P.O. Box 5621  
San Mateo, CA 94402

17 Request for Special Notice

18 CMR Mortgage Fund  
19 c/o Benjamin Levinson  
20 577 Salmar Avenue #125  
21 Campbell, CA 95008

Request for Special Notice

County Bank  
c/o Hauser & Mouzes  
18826 North Lower Sacramento #H  
Woodbridge, CA 95258-1397

20 Request for Special Notice

21 Boulder Capital Leasing  
22 c/o Glass & Goldberg  
23 21700 Oxnard Street #430  
24 Woodland Hills, CA 91367

Attorneys for Stevens

D. Kevin Porter  
Caldwell, Kennedy & Porter  
15476 West Sand Street  
Victorville, CA 92392

23 Attorneys for Nuckles

24 Scott Showler  
25 Dill & Showler  
26 411 Brookside Avenue  
27 Redlands, CA 92373

Attorneys for Cox Oil

Gary W. Rose  
5580 La Jolla Boulevard #433  
La Jolla, CA 92037

26 All Creditors

27 California Mortgage & Realty Co.  
28 1539 Webster Road  
Oakland, CA 94612

Benjamin Levinson  
588 Salmar Avenue #125  
Campbell, CA 95008

1 Cupertino National Bank  
2 20230 Stevens Creek Boulevard  
3 Cupertino, CA 95014  
4  
5 BP West Coast Products Inc.  
6 c/o Paul Arrow  
7 601 South Figueroa Street #2400  
8 Los Angeles, CA 90017  
9  
10 Coremark  
11 Dept. 66579-31  
12 El Monte, CA 91735  
13  
14 Hauser & Mouzes  
15 David Anderson  
16 18826 North Lower Sacramento #H  
17 Woodbridge, CA 95258  
18  
19 Irvine Spectrum Office Suites  
20 7700 Irvine Centre Drive  
21 Irvine, CA 92408  
22  
23 Al Klein  
24 1008 shadow Glen Place  
25 Lincoln, CA 95648  
26  
27 Merit Oil Co.  
28 P.O. Box 341  
Bloomington, CA 922316  
29  
30 Muzak  
31 1285 Columbia Avenue  
32 Riverside, CA 92507  
33  
34 Northview Distributors  
35 395 South Highway 65 #395/300  
36 Lincoln, CA 95648  
37  
38 Securities & Exchange Commission  
39 5670 Wilshire Boulevard, 11<sup>th</sup> Flr  
40 Los Angeles, CA 90036  
41  
42 Take a Break  
43 2120 Harmony Grove Road  
44 Escondido, CA 92029  
45  
46 Charles E. Thomas  
47 13710 South Alma  
48 Gardena, CA 90249

Beth Ann Young  
c/o Jeffers Mangel Butler et al.  
1900 Avenue of the Stars  
Seventh Floor  
Los Angeles, CA 90067  
  
Coca Cola Enterprises  
File No. 53138  
Los Angeles, CA 90015  
  
County Bank  
550 West Main Street  
Merced, CA 95341  
  
Leon Draper  
c/o Stephen R. Wade  
400 North Mountain Avenue #214B  
Upland, CA 91786  
  
K&N Gas  
c/o Ron Galaso  
1633 Old Bayshore Highway #125  
Burlingame, CA 94101  
  
McLean Company  
4472 Georgia Boulevard  
San Bernardino, CA 92407  
  
Scott Showler  
Dill & Showler  
411 Brookside Avenue  
Redlands, CA 92373  
  
NCO Financial Services  
P.O. Box 41417  
Dept. 99  
Philadelphia, PA 19101-1601  
  
Paychex  
625 East Carnegie #150  
San Bernardino, CA 92408  
  
Southern California Edison  
P.O. Box 600  
Rosemead, CA 91771-0001  
  
Temecula Valley Bank  
c/o Raymond King  
140 Newport Center Drive #250  
Newport Beach, CA 92660  
  
Tri State Environmental  
17100 Bear Valley Road  
PMB 320  
Victorville, CA 92392

1 U.S. Department of Justice  
2 Civil Trial Section  
3 West Region  
4 P.O. Box 683  
5 Ben Franklin Station  
6 Washington, DC 20044  
7  
8 Black Diamond Fuel  
9 6000 Mariposa Road  
10 Hesperia, CA 92345  
11  
12 Citicorp Leasing  
13 P.O. Box 7247  
14 Philadelphia, PA 19170  
15  
16 Douglas Perkins  
17 6000 Mariposa Road  
18 Hesperia, CA 92345  
19  
20 State Board of Equalization  
21 P.O. Box 942879  
22 Sacramento, CA 94279-0001  
23  
24 Employment Development Department  
25 Bankruptcy Group MIC 92E  
26 P.O. Box 826880  
27 Sacramento, CA 94280-0001  
28  
29 Internal Revenue Service  
30 P.O. Box 30213  
31 Laguna Niguel, CA 92607-0213

Union Bank of California  
P.O. Box 2306  
Brea, CA 92822

Boulder Capital Leasing  
2121 S.W. Broadway, 2<sup>nd</sup> Floor  
Portland, OR 97201

Monty Lewis  
6000 Mariposa Road  
Hesperia, CA 92345

Internal Revenue Service  
290 North "D" Street  
San Bernardino, CA 92401

Coremark  
353 Meyer Circle  
Corona, CA 92879

Franchise Tax Board  
Attn: Bankruptcy  
P.O. Box 2952  
Sacramento, CA 95812-2952